

Remarks

Claims 1-8 were previously pending in the subject application. By this Amendment, claims 1 and 8 have been amended, and claim 6 has been canceled. No new matter has been introduced. Accordingly, claims 1-5 and 7-8 are now before the Examiner for further consideration.

The amendments to the claims have been made in an effort to lend greater clarity to the claimed subject matter and to expedite prosecution. These amendments should not be construed as an indication of the applicant's agreement with, or acquiescence to, the rejections of record. Favorable consideration of the claims now presented, in view of the amendments and remarks set forth herein, is earnestly solicited.

Claims 1-5 and 8 have been rejected under 35 U.S.C. §102(b) as being anticipated by Williams *et al.* (U.S. Pat. No. 6,436,256). The applicant respectfully requests reconsideration.

By this Amendment, claim 1 has been amended to recite that "the lysing agent is comprised in the first electrode." This novel and advantageous aspect of the subject invention is described throughout the specification, including at page 2, line 28 through page 3, line 15. Williams *et al.*, on the other hand, fail to teach or even suggest a sensor with all of the features of the claimed invention, including a lysing agent comprised in a first electrode.

As the Examiner is aware, it is a basic premise of patent law that in order to anticipate, a single reference must disclose within the four corners of the document each and every element and limitation contained in the rejected claim. *Scripps Clinic & Research Foundation v. Genentech Inc.*, 18 U.S.P.Q.2d 1001, 1010 (Fed. Cir. 1991). As discussed above, Williams *et al.* do not disclose certain aspects of the claimed invention. Additionally, the applicant notes that this rejection was not applied to claim 6, and the limitations of claim 6, as previously presented, have been incorporated into claim 1.

Accordingly, the applicant respectfully requests reconsideration and withdrawal of the rejection under §102 based on Williams *et al.*

Claims 1-8 have been rejected as being anticipated by McCann *et al.* (WIPO Pub. No. 2002/14535). The applicant respectfully traverses this ground for rejection because the cited reference does not teach or even suggest the applicant's advantageous sensor.

The claimed invention is drawn to a sensor including at least two electrodes and a lysing agent. Claim 1, as amended, requires that “the lysing agent is comprised in the first electrode.” The Action states at page 6 that this phrase was interpreted as meaning that the electrode surface is dosed with a solution containing the lysing agent. However, the applicant respectfully submits that this interpretation is not completely correct. In the passage bridging pages 2 and 3 of the subject specification, two different ways of incorporating the lysing agent are disclosed.

One of the ways to incorporate the lysing agent (heading “1”) leads to the agent being present only on the surface of the electrode. The other way (heading “2”) teaches incorporating the lysing agent into “the structure of the working electrode.” A skilled artisan would understand the recitation in claim 1, that “the lysing agent is comprised in the first electrode” (emphasis added), to require that the lysing agent is incorporated into the structure of the electrode (as in heading “2”) and not just on the surface of the electrode.

In order for a sensor to have the lysing agent comprised in the electrode, more is required than just dosing an electrode surface with a solution containing a lysing agent. For example, the subject invention can include a porous electrode material, such that application of a lysing agent on the electrode leads to incorporation of the agent in the electrode.

In the McCann *et al.* reference, on the other hand, there is no teaching, or even suggestion, of a sensor in which a lysing agent is comprised in a first electrode (that is, incorporated in the structure of an electrode). Instead, in the sensor of McCann *et al.*, the reagents are only present on the surface of the electrode. While the reagents can be dosed onto the device, a skilled artisan would readily recognize that this would only lead to them being on the surface of the non-porous electrode. Thus, McCann *et al.* disclose only the first method (heading “1”) of incorporating a reagent disclosed at the bottom of page 2 of the subject specification, wherein a reagent would only be present on the surface of an electrode.

As discussed above, it is a basic premise of patent law that in order to anticipate, a single reference must disclose within the four corners of the document each and every element and limitation contained in the rejected claim. *Scripps Clinic & Research Foundation, supra*. McCann *et al.* do not disclose a sensor having a lysing agent comprised in an electrode, as required by the

claimed invention. Additionally, though it is not necessary to overcome the rejection under §102, the applicant submits that a skilled artisan would not have found any reason to modify the McCann *et al.* device to arrive at the claimed sensor.

Accordingly, the applicant respectfully requests reconsideration and withdrawal of the rejection based on McCann *et al.*

Claims 1-5 and 8 have been rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 3, and 4 of Williams *et al.* (U.S. Pat. No. 6,436,256). The applicant respectfully submits that the claims, as currently presented, are not obvious over claims 1, 3, and 4 of Williams *et al.* By this Amendment, claim 1 has been amended to incorporate the limitations previously presented in claim 6. The applicant notes that this rejection was not applied to claim 6. Accordingly, the applicant respectfully requests reconsideration and withdrawal of the double patenting rejection.

In view of the foregoing remarks and amendments to the claims, the applicant believes that the currently pending claims are in condition for allowance, and such action is respectfully requested.

The Commissioner is hereby authorized to charge any fees under 37 CFR §§1.16 or 1.17 as required by this paper to Deposit Account No. 19-0065.

The applicant invites the Examiner to call the undersigned if clarification is needed on any of this response, or if the Examiner believes a telephonic interview would expedite the prosecution of the subject application to completion.

Respectfully submitted,

A handwritten signature in dark ink, appearing to be 'L. C. Frank', with a long horizontal flourish extending to the right.

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